

will be read to the condemned Modocs.

A still later despatch says that General Davis, after having completed all arrangements for the execution of the Modocs, received an order from Washington to hold the prisoners. This stopped the contemplated work. The feeling in camp is one of profound disgust at the result.

One of the Oregon volunteers just arrived in camp says the troops had captured five warriors, four squaws, and five children. Among the men were Black Jim and Dave. These prisoners were at Linkville.

WASHINGTON, 6.—An enterprising individual writes to the government, from Tiffin, Ohio, offering to pay sixty thousand dollars for the privilege of exhibiting Capt. Jack throughout the country during sixty days. The showman promises to keep Jack securely, and to treat him well and return him to the government at the expiration of sixty days, provided he doesn't commit suicide, in which case the government is to receive only a thousand dollars per day for the time he remains in the showman's hands alive. It is proposed to pay thirty thousand dollars upon the delivery of Jack at Chicago, and the remainder at the close of the two months.

CHICAGO, 7.—The *Tribune* has been following special from New York, dated at an early hour this morning:

"Victoria Woodhull, who at first was thought to be dead, was only unconscious, in which condition she still remains, her friends say with little probability of recovery."

As these same friends telegraphed in all directions that she was dead, this last statement is taken *cum grano salis*, and the whole story is believed to be a dodge to create sympathy for her.

The *Tribune* Vienna correspondent, under date of May 13, speaking of charges against the American commissioners, says the general impression there is that Meyer is guilty of the charges against him, and will be permanently removed, and that if Van Buren shall fail of reinstatement, it will be in consequence of his waim defence of Meyer having given impression that he was implicated with him. The other members of the Commission have been wholly exonerated, and will probably be reinstated. The correspondent adds that the charges of incapacity brought against Van Bruen's Commission are eminently unjust, as the United States Department, with its eight hundred exhibitors, shows that men who are lacking in executive ability or influence could not have gathered such an exhibit. It has now been proven beyond question that no money was paid by the Commissioners for their appointments, but all the appointments were made on the recommendation of well known and honorable citizens.

WASHINGTON.—There is no doubt that a commission will be organized without delay and the trial of the Modocs commenced according to the regulations of the army. The proceedings and findings of a military commission, where the sentence is death, are transmitted to Washington for the review and approval of the President, before the sentence can be carried into effect. Several weeks must unavoidably pass before the punishment of the Modocs can take place.

WASHINGTON, 7.—The following is the decision of the Attorney General relative to the Modoc captives:—

DEPARTMENT OF JUSTICE,
Washington, June 7, 1873.

To the President:

SIR:—I have the honor to acknowledge the receipt, from you, of several papers relative to the Modoc Indians, now in the custody of the U. S. army, with a request for my opinion as to the authority to try certain prisoners by a military tribunal. The main facts in the case on which a question arises are these: In 1864 the U. S. made a treaty with these Indians, by the terms of which they were to go and remain upon a reservation in the state of Oregon. Late last fall they, the Indians, being away from their reservation, a military detachment was sent to procure their return. Finding them unwilling to go peacefully, the officer indicated his determination to use compulsion, in consequence of which a conflict ensued between the U. S. troops and the Indians. Soon after, several peaceable citizens and their families were murdered by the Indians of this band, they then having en-

trenched themselves in the Lava Beds, in the neighborhood of which fighting ensued, and one or more severe battles were fought, in which persons on both sides were wounded and killed and U. S. troops repulsed. Pending hostilities negotiations were opened for peace, and on the 17th of April last Gen. Canby, Rev. Mr. Thomas, and Mr. Meacham, at a point between the opposing forces and in pursuance of a mutual agreement to that end, met Captain Jack, leader of the Indians, with some of his chief warriors, to discuss the terms of a treaty, and while so engaged Gen. Canby and Mr. Thomas were treacherously murdered, and Mr. Meacham severely wounded by the Indians. Upon that occasion a battle followed, and Captain Jack and all or most all his tribe have been captured and are now in the hands of the military authorities. Gen. Sherman, in a communication to the secretary of war, dated 3rd inst, recommends such of these Indians as have violated military law to be tried by military tribunal. This recommendation is approved by the Secretary of war.

Instructions were prepared in 1863, by Francis Leiber, L. L. D., which were received by a board of officers, of which Gen. E. A. Hitchcock was President, and after approval by the President of the United States, were published, for the government of the armies of the United States in the field. Section thirteen of these instructions is as follows: "Military jurisdiction is of two kinds, first that which is derived from the common law of war. Military officers, under statute law, must be tried in the manner therein decided, but military offences, which do not come within the statute, must be tried and punished under the common law of war. The character of the courts which exercise these jurisdictions depend upon the local laws of each particular country. * * *

* * * Cases which do not come within the rules and articles or jurisdiction conferred by statute on court martial, are tried by military commissioners." All authorities which I have been able to examine upon this subject harmonize with these instructions. According to the laws of war then, nothing is more sacred than a flag of truce dispatched in good faith, and there can be no greater act of perfidy and treachery than assassination by its bearers after they have been acknowledged and received by those to whom they are sent. No statute of the U. S. makes this act a crime, therefore it is not punishable under the rules and articles of war, and if punishable at all it must be through the power derived from the usages of war. Kindred to the act in question, is bad faith or breaking his parole by a paroled prisoner. When the U. S. were at war with Mexico several officers in the Mexican army were tried by a military commission composed of U. S. Army, and convicted and sentenced to be shot for breaking their parole. Numerous trials of a similar nature took place during the war of the rebellion, but there are no statutory provisions whatever on the subject, and the whole power of the military authorities in such cases is derived from the usages of war.

On the 23d of August, 1865, a military commission duly appointed assembled in the city of Washington for the trial of Henry Wing, who pleaded among other things, that a military commission had no jurisdiction over either his person or the subject matter of the charges and specifications brought against him, and that the tribunal was unauthorized by either statute law or well established usage. But this plea was overruled, and he was convicted on several charges, one of which was murder, in violation of the laws and customs of war, and after sentence he was hung for his crimes. All the proceedings in this case derived their authority and validity from the common law of war.

Certain persons, it will be remembered, were tried and convicted in this way for the assassination of President Lincoln. Attorney General Speed, in discussing this subject (*Opinions*, Volume II, page 297), says:

"We have seen that when war comes, the laws and usages of war come also, and that during war they are part of the laws of the land. Under the constitution Congress may define and punish offences against those laws, but in default of Congress defining those laws and prescribing punishment

for their infraction, and the mode of proceeding to ascertain whether an offence has been committed and what punishment is to be inflicted, the army must be governed by the laws and usages of war, as understood and practiced by the civilized nations of the world."

"Again if a prisoner be a regular, and unoffending soldier, of the opposite party to the war, he should be treated with all courtesy and kindness consistent with his safe custody. If he has offended against the laws of war he should have such trial and punishment as the laws require. A spy, though a prisoner of war, may be tried, condemned and executed by a military tribunal without a breach of the constitution. A bushwhacker, jayhawker, bandit of war, rebel or assassin, being public enemies, may be tried, condemned and executed as offenders against the laws of war. The law of nations, which is the result of the experience and wisdom of ages, has decided that jayhawkers, bandits, &c., are offenders against the law of nations and of war, and as such are amenable to the military. Our constitution has made those laws part of the law of the land."

See also Vattel 359, Wheaton's Int. Law 406, Woolsey's Int. Law, 220, Hallard's Int. Law 400, Milligan's case, 4 Wallace, p. 2., holds that under the circumstances herein stated a military commission would be illegal, but the facts there are entirely different from those under consideration. Milligan was a resident of a State not in rebellion. The courts were open and unobstructed for his prosecution. He was neither a prisoner of war or attached in any way to the military or naval service of the U. S. According to instructions heretofore referred to, no civil tribunal has jurisdiction in the case disclosed by the papers before me. Forty and forty-one thereof are as follows:

"Section 40.—There exists no law or body of authoritative law, of rules of action between hostile armies except that branch of nature and nations which is called law and the usage of war on land."

"Section 41.—All municipal law of the ground on which armies stand, or of the countries to which they belong is silent and of no effect between armies in the field."

Manifestly these rules are, to a great extent if not altogether, correct, for it cannot be pretended that a U. S. soldier is guilty of murder if he kills a public enemy in battle, which would be the case if the municipal law was in force under such circumstances. All laws and customs of civilized warfare may not be applicable to any armed conflict with Indian tribes on our western frontier, but the circumstances attending the assassination of Canby and Thomas are such as make their murder as much the violation of the laws of savage as of civilized warfare, and the Indians concerned in it fully understood the baseness and treachery of their act.

It is difficult to define exactly the relations the Indians holds to the U. S., but as they have been recognized as independent commissioners for treaty making purposes, and as they frequently carry on organized and protracted wars, they may properly, as it seems to me, be held subject to those rules of warfare, which make a negotiation for peace after hostilities possible, and which make perfidy like that in question punishable by the military authorities. Doubtless the war with the Modocs is practically ended, unless some of them should escape and renew hostilities. Section 59 of said instrument is as follows:

"A prisoner of war remains answerable for his crimes committed against the captors, army and people, committed before he was captured, and for which he has not been punished by his own authorities."

My conclusion therefore is that a military commission may be appointed to try such of the Modoc Indians now in custody of war, and that if on such trial they are found guilty, they shall be subjected to punishment as those laws direct. GEO. H. WILLIAMS, Attorney-General.

KEY WEST, 7.—Intelligence of the safety of the steamship *George Cromwell*, from New York for New Orleans, reached here to-day.

Dispatches received from Yreka this evening, dated Boyle's Camp, Tule Lake Peninsula, June 6, says: "Soon after the arrival of the Modoc prisoners in this camp, General Davis sent word to the settlers of

Tule Lake and Lost River country that he desired them to come and identify the murderers in the band and the stolen property. Among those who responded to the call were Mrs. Boddy and her daughter Mrs. Schiera, two women who were widowed by the Modocs. Boddy and Schiera took up three quarter sections of land near the mouth of Lost River last August, and with their families settled the country. On the a.m. of Nov. 29, Captain Jackson's command attacked Jack and his party on Lost River and compelled them to retire. Hooka Jim and his party were on the north side of the river from Jack, but knew of his defeat. Mr. Boddy, Mr. Schiera and two sons of Boddy were murdered by Hooka Jim and his associates during the forenoon of that day, while cutting wood, herding sheep, etc., within a few miles of the house and utterly unconscious of danger. The agent of the Yainox had promised them that any offensive movement against the Indians should be made known to the settlers in time to afford them an opportunity to obtain safe refuge. The messenger sent by the agent failed to do his duty, and thereby facilitated the massacre. The arrival of Mr. Boddy's team without a driver and the blood upon the wagon was the first intimation of the terrible tragedy which these poor women received; before noon they found the bodies of the murdered men stripped of all clothing. At different points, within a few miles of the house, they also met the Modocs, Hooka Jim, Long Jim, Curly-headed Doctor, One-eyed Mose, Rock Dave, Humpy Jerry and Mrs. Hooka Jim, who were implicated in the crime. While the Indians went to the house to find more male victims, the women escaped, traveling day and night, and suffered many hardships, and reached Van Ralsp's at Lost River, in an exhausted condition. The General received the women kindly, and promised to assist them in the recovery of the stolen goods. This morning Hooka Jim and Steamboat Frank, who had just returned from a scout after three or four missing Modocs, were taken to the tent occupied by the women. Hooka Jim was identified by Mrs. Boddy as one of the Indians concerned in the massacre. When questioned about the robbery he said that Long Jim took a long purse containing \$800 and he took a short purse. The women here became excited, they lost all control over their feelings and began crying, and started in for desperate work. Mrs. Schiera drew a pistol and started for Steamboat Frank, and Mrs. Boddy drew a knife and dashed at Hooka Jim. Gen. Davis stepped in and in a moment secured both weapons. During the struggle the General received a slight cut in the palm of the hand, and near the thumb. Hooka and Steamboat stood like statues, neither spoke nor offered to resist. It galls Jack and his comrades to see Hooka Jim and Frank traveling to and fro at will and armed. They do not understand the result of turning States' evidence. This afternoon he became greatly agitated and gave vent to his rage in a fiery oration. He rose in his chains with Schonechin, and in a strong and impressive manner recited his grievances. While Jack was in the midst of his oration his fellow captives were warming into sympathy with him, and the officer of the guard came in and compelled him to desist. There are now 131 Modocs under guard.

JUNE 7.—General Davis proposes to take the cavalry, the light battery of the fourth artillery and the infantry, and march to Klamath, to Warner, to Harney and to Walla Walla, for the purpose of intimidating bad Indians. Preliminary orders for the movement have been issued.

SAN FRANCISCO, 9.—Dispatches from Boyle's Camp, dated yesterday, relate the particulars of an atrocious massacre of the Modoc prisoners, supposed by the Oregon volunteers. On Saturday morning, James Fairchild, and about a dozen other men, left Fairchild's ranch, Cottonwood Creek. Seventeen Modoc captives, including women and children, also Shack Nasty Jim, Bogus Charley, Tehee Jack, Pang and Little John, Indians, were in a wagon, drawn by four mules. At the crossing of Lost River the party encountered the Oregon volunteers under the command of Captain Hiser. The soldiers gathered about the wagon and questioned Fairchild. The latter told them the Modocs were all Hot Creeks, and

except little John there were no charges against them. Fairchild undertook to push on to Boyle's camp, and the volunteers retired to camp near Crawley's. On the road he noticed two men ahead, riding to Rocky Point, as if to intercept him. When the team approached, one of them presented a needle gun at Fairchild saying, "Get down, you old white headed s—n of a b—h." "By what authority?" said Fairchild. "By mine, I am going to kill the Indians, and you too," was the reply. Their leader caught hold of the mules and unhitched the harness. Fairchild clinging to the lines leaped to the ground. The poor wretches implored for mercy, and begged Fairchild to save them. The warriors were unarmed and although they knew that resistance was useless they were the coolest in the party, though facing inevitable death. But the women and children shrieked, groaned and wept piteously. Fairchild had nothing but a small pistol, and six inches from his ear was the muzzle of a needle gun. He says, "The tears came to my eyes, and I mingled my voice with those of the Modocs, in hope that the massacre might be averted. Oh, it was a terrible scene. I never shall forget it. I shudder when I think of what I saw. I hear the tearful voices of those women and children still ringing in my ears. But the cowardly hounds were not to be balked. A shot, and Little John lay dead in the bed of the wagon, a bullet in his brain. The mules dashed away with Fairchild, and tangled him in the lines. Five more shots in rapid succession, and Ichee, Jack, Poney and Mooch, the remaining warriors were dead. Little John's squaw had a frightful wound in her shoulder. Away, ahead in the road, in the direction of Boyle's camp was a cloud of dust, indicating the approach of a team. The murderers espied the dust and in a moment were riding rapidly, away. Sergeant Murphy, battery G, fourth artillery, with 10 men and teamsters came by the team. The sergeant took charge of affairs and remained with his men on the ground. Fairchild and the wounded squaw and her two children, came at two o'clock this a.m. Fairchild reached General Davis' headquarters, and related his story. The teams with an escort were at once sent out after the prisoners, dead and alive. No steps have been taken for the apprehension of the felons who performed this bloody work. It is generally supposed that the Oregon volunteers are the guilty parties. Fairchild is of that opinion himself. The warriors killed were not charged with murder, and those who know them best say they have only participated in open fight. Every one here condemns the affair as an atrocity and without excuse. There is no doubt but the murders were carried out upon a carefully arranged plan, as Fairchild noticed the horsemen on the road ahead and behind him. When the shots were fired, had John Fairchild instead of James been present, another murder might have been added to the list, as the Oregonians are bitter in their hatred of John.

A second dispatch from Boyle's camp, June 8, 3 p.m., says an interview between Gen. Davis, Captain Jack and Schonechin has just terminated. The Modoc chief says he was incited to his cruel warfare by Allen David, Chief of the Klamaths; he also denied having killed General Canby, laying the blame on his boys. Schonechin told the same story.

MARRIED.

In this City, June 2nd, 1873, by P-estident D. H. Wells, Mr. LEWIS SEITH ROBINSON, late of Mendota, Ill., to Miss MARY M. DRIGGS, of Pleasant Grove, Utah.

At St. Mark's Episcopal Church, June 7th, by the Right Rev. D. S. Tuttle, D. D., Mr. ANTHONY GODBE to Miss MINNIE STENHOUSE, both of this city. No cards.

Mr. Godbe and his bride left on a wedding tour for the Pacific Coast, on Saturday afternoon.

FULL MEASURE.—While Dr. Price's Special Flavorings are full measure, other extracts are short nearly one-half what they are said to contain, arranged to look large and sell cheap, a cheat on the consumer. The most of the so-called 2 ounce flavoring extracts hold but 1 1/2 ounces, the 4 ounce less than 3 ounces, while Dr. Price's are full measure, just as represented, strong and pure. One trial will prove that the bottles hold one-half more than others purporting to be the same size, and the extracts are of the strongest and most natural flavor. d187-s&w le